United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

B
RBS

77-1065

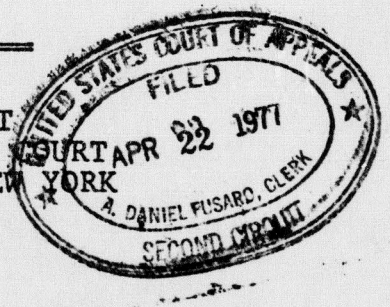
To be argued by
JONATHAN J. SILBERMANN

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, -against- JOHN TARKO and ROBERT E. MYLAN, Defendants-Appellants.	Docket No. 77-1065 Docket No. 77-1066

APPENDIX TO THE BRIEF
FOR APPELLANT MYLAN

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
ROBERT E. MYLAN
FEDERAL DEFENDER SERVICES UNIT
509 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

JONATHAN J. SILBERMANN,
Of Counsel.

PAGINATION AS IN ORIGINAL COPY

CRIMINAL DOCKET - U.S. District Court

PETTY OFFENSE PO
MINOR OFFENSE MO
MISDEMEANOR Mis
FELONY Fel

JUDGE MAGISTRATE Assigned: 0712 / 207 (District) / 1 (Office) — Disp./Sentence

U.S. vs. **76CR 467 A**

ROBERT MYLAN
(LAST, FIRST, MIDDLE)

JUVENILE

Date Filed: Mo 7 Day 22
No. of Def's: * 2

MISHLER

76 (Yr) 467 (Docket No)

U.S. TITLE/SECTION: 18-2, 371 & 641

OFFENSES CHARGED: Did receive, conceal stolen property of the USA (Treas.checks payable to others)

ORIGINAL COUNTS: 14

U.S. MAG CASE NO. 76 M 10

CLOSED

SUPERSEDING COUNTS

BAIL • RELEASE

Denied / AMT Set $ 10,000 / Fugitive / Pers. Recog / PSA

Date made: 6-2-76

Bail Not Made

Status Changed (See Docket)

conditions: X 10% Deposit / Surety Bond / Collateral / 3rd Prty Cust / Other

II. KEY DATES & INTERVALS

ARREST or: U.S. Custody Began; Summons Served; First Appearance: 6-2-76

INDICTMENT X: High Risk Date; Information ☐ 7-22-76; Indict. Waived ☐; In Charging District; Superseding ☐ Indict/Info ☐

ARRAIGNMENT: 7/29/76; 1st Plea: X NG ☐ G ☐ NOL; Final Plea: 11/22/76: ☐ NG X G ☐ NOL

TRIAL: Trial Set For; Voir Dire ☐; Trial Began ☐ J ☐ N ☐ J; Trial Ended

SENTENCE: Disposition of Charges; ☐ Convicted; ☐ Acquitted; ☐ Dismissed: ☐ WOP: ☐ WP; ☐ On Gov'nm't's Motion; ☐ On All Charges; ☐ On Lesser * Offense(s)

MAGISTRATE

	DATE	INITIAL/NO.
Search Warrant: Issued / Return		
Summons: Issued / Served		
Arrest Warrant issued		
COMPLAINT ▶	6-2-76	ASC/070B
OFFENSE (In Complaint)	Possession of stolen gov't checks. T-18 USC Section 641	

INITIAL APPEARANCE DATE ▶

PRELIMINARY EXAMINATION OR ☐ REMOVAL HEARING: Date Scheduled ▶ 6-22-76; Date Held ▶

X WAIVED ☐ NOT WAIVED ☐ INTERVENING INDICTMENT

Tape Number: 6-22-76 Recorded (Probable Cause hearing)

INITIAL/NO.

OUTCOME:
☐ DISMISSED
X HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

U.S. Attorney or Asst.: Robert Katzberg

ATTORNEYS: Defense ☐ CJA ☐ Ret. ☐ Waived ☐ Self ☐ None / Other X FD ☐ CD

Marion Seltzer, Esq.

* Show last names and suffix numbers of other defendants on same indictment/information:

TARKO 2

DATE	(DOCUMENT NO.) PROCEEDINGS	EXCLUDABLE DELAY (a) (b) (c) (d)
6-22-76	Probable Cause hearing held. Witness for Gov't Eugene L. Crouch Deft. held to answer Grand Jury. Bail continued June 2, 1976 - Deft. released - Receipt No. 81705.	
7-22-76	Before Costantino J - Indictment filed	
7/29/76	Before MISHLER, CH. J. - Case called. Deft & Counsel present. Deft arrainged and on his own behalf enters a plea of not guilty. Bail continued. Trial date set for 9/3/76 at 11:00 a.m.	
7/30/76	Notice of Readiness for trial filed.	8/9/76 I 9/3/76
9/3/76	Notice of Motion pursuant to Rule 12(b)(3) and Rule 41(f) for suppression filed and sent to chambers. Affidavit in support of motion filed.	
9-3-76	Before Mishler, CH J - case called - deft & counsel present - case adjd to 9-17-76 at 9:30 am for setting of trial date pending decision in motions of both defts.	
9/17/76	Before MISHLER, CH. J. - Case called. Deft & Counsel present. Trial date for 11/22/76	9/17/76

FORM AO-256

TO LIST THE APPLICABLE DOCKET ENTRIES SHOWN IN SECTION V, ANY OCCURENCE OF EXCLUDABLE DELAY PER 18 USC § 3161(h)

DATE	IV PROCEEDINGS (continued) (DOCUMENT NO.) PAGE TWO	V. EXCLUDABLE DELAY (a)	(b)	(c)	(d)	LE For Pur Use A.
10-18-76	By MISHLER, CH J - Memorandum of decision and order filed denying defts motion to suppress. The evidentiary hearing on the oral admissions will be held on first day of trial scheduled to begin on 11-22-76. Clerk is directed to enter judgment dismissing the defts motion to suppress.					
11/22/76	BeforeMISHLER, CH. J.- Case called. Deft & Counsel present. Deft withdraws his plea of not guilty to count 1 and after being advised of his right by the Court and on his own behalf enters a plea of guilty to count 1. Sentence adjd without date. Bail conditions continued.					B. C. D. E. F.
1.28.77	Before Mishler, J.- Case Called. Deft. & Counsel present. Sentence adjd. to 2.7.77 at 9:30 A.M. on consent.					
2-7-77	Before Mishler, Ch J - case called - deft & counsel M.Seltzer present - deft sentenced to imprisonment for 7 years on count 1 - On motion of AUSA Woodfield counts 2 to 14 are dismissed. Clerk to file Notice of appeal without fee., on the decision of the court on motion to suppress dated Oct. 15, 1976. Bail conditions contd pending appeal.					G.
2-7-77	Judgment and commitment filed - certified copies to Marshal.					H.
2-7-77	Notice of appeal filed without fee.					
2-7-77	Docket entries and duplicate of notice mailed to the court of appeals					I.
2/22/77	Record j on appeal certified and hand delivered to the C of A by Joan Gill.					M. N. O. P. R. T. U. W.

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

RP:GAW:rd
761,941

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
JUL 22 1976
TIME A.M.
P.M.

B

76CR 467

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

-against-

ROBERT E. MYLAN and
JOHN A. TARKO,

Defendants.

- - - - - - - - - - - - - - - - - - - X

INDICTMENT

Cr. No. _____
(T. 18, U.S.C. §§2, 371, and 641).

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 1st day of June, 1976, within the Eastern District of New York, the defendant ROBERT E. MYLAN and the defendant JOHN A. TARKO wilfully and knowingly did receive, conceal and retain stolen property of the United States, that is a United States Treasury check number 25,404,783 payable to Abraham Stember in the amount of Two Hundred Ninety Seven Dollars and Seventy-Eight Cents ($297.78) with intent to convert said check to their own use, the defendants ROBERT E. MYLAN and JOHN A. TARKO then knowing said check to have been stolen. (Title 18, United States Code, Sections 641 and 2).

COUNT TWO

On or about the 1st day of June, 1976, within the Eastern District of New York, the defendant ROBERT E. MYLAN and the defendant JOHN A. TARKO wilfully and knowingly did receive, conceal and retain stolen property of the United States, that is a United States Treasury check number 25,404,957 payable to William M. Moriarty in the amount of Two Hundred Fifty Three Dollars and Eighty-One Cents ($253.81) with intent to convert said check to their own use, the defend ts ROBERT E. MYLAN and JOHN A. TARKO then knowing said check to have been stolen. (Title 18, United States Code, Sections 641 and 2).

(1)

COUNT THREE

On or about the 1st day of June, 1976, within the Eastern District of New York, the defendant ROBERT E. MYLAN and the defendant JOHN A. TARKO wilfully and knowingly did receive, conceal and retain stolen property of the United States, that is a United States Treasury check number 25,405,037 payable to Vincent J. Gugleotti in the amount of Two Hundred Sixty Five Dollars and Fifty-Eight Cents ($265.58) with intent to convert said check to their own use, the defendants ROBERT E. MYLAN and JOHN A. TARKO then knowing said check to have been stolen. (Title 18, United States Code, Sections 641 and 2).

-2-

COUNT FOUR

On or about the 1st day of June, 1976, within the Eastern District of New York, the defendant ROBERT E. MYLAN and the defendant JOHN A. TARKO wilfully and knowingly did receive, conceal and retain stolen property of the United States, that is a United States Treasury check number 25,405,042 payable to Donald F. Jordan in the amount of Two Hundred Eighteen Dollars and Eighty-Four Cents ($218.84) with intent to convert said check to their own use, the defendants ROBERT E. MYLAN and JOHN A. TARKO then knowing said check to have been stolen. (Title 18, United States Code, Sections 641 and 2).

COUNT FIVE

On or about the 1st day of June, 1976, within the Eastern District of New York, the defendant ROBERT E. MYLAN and the defendant JOHN A. TARKO wilfully and knowingly did receive, conceal and retain stolen property of the United States, that is a United States Treasury check number 25,406,994 payable to Irving G. Frohman in the amount of

Four Hundred Five Dollars ($405.00) with intent to convert said check to their own use, the defendants ROBERT E. MYLAN and JOHN A. TARKO then knowing said check to have been stolen. (Title 18, United States Code, Sections 641 and 2).

COUNT SIX

On or about the 1st day of June, 1976, within the Eastern District of New York, the defendant ROBERT E. MYLAN and the defendant JOHN A. TARKO wilfully and knowingly did receive, conceal and retain stolen property of the United States, that is a United States Treasury check number 25,408,924 payable to William Yearwood in the amount of One Hundred Seven Dollars and Ninety Cents ($107.90) with intent to convert said check to their own use, the defendants ROBERT E. MYLAN and JOHN A. TARKO then knowing said check to have been stolen. (Title 18, United States Code, Sections 641 and 2).

COUNT SEVEN

On or about the 1st day of June, 1976, within the Eastern District of New York, the defendant ROBERT E. MYLAN and the defendant JOHN A. TARKO wilfully and knowingly did receive, conceal and retain stolen property of the United States, that is a United States Treasury check number 25,407,006 payable to Hubert S. Pearlman in the amount of One Hundred Ninety Seven Dollars and Fifty Cents ($197.50) with intent to convert said check to their own use, the defendants ROBERT E. MYLAN and JOHN A. TARKO then knowing said check to have been stolen. (Title 18, United States Code, Sections 641 and 2).

-4-

COUNT EIGHT

On or about the 1st day of June, 1976, within the Eastern District of New York, the defendant ROBERT E. MYLAN and the defendant JOHN A. TARKO wilfully and knowingly did recieve, conceal and retain stolen property of the United States, that is a United States Treasury check number 25,409,273 payable to Salvatore J. Piccione in the amount of Five Hundred Forty Eight Dollars and Ninety-Two Cents ($548.92) with intent to convert said check to their own use, the defendants ROBERT E. MYLAN and JOHN A. TARKO then knowing said check to have been stolen. (Title 18, United States Code, Sections 641 and 2).

COUNT NINE

On or about the 1st day of June, 1976, within the Eastern District of New York, the defendant ROBERT E. MYLAN and the defendant JOHN A. TARKO wilfully and knowingly did receive, conceal and retain stolen property of the United States, that is a United States Treasury check number 25,409,625 payable to Virgil F. Ratta in the amount of Five Hundred Fifty Eight Dollars and Fifty-Three Cents ($558.53) with intent to convert said check to their own use, the defendants ROBERT E. MYLAN and JOHN A. TARKO then knowing said check to have been stolen. (Title 18, United States Code, Sections 641 and 2).

COUNT TEN

On or about the 1st day of June, 1976, within the Eastern District of New York, the defendant ROBERT E. MYLAN and the defendant JOHN A. TARKO wilfully and knowingly did receive, conceal and retain stolen property of the United States, that is a United States Treasury check number 25,409,667 payable to Sam F. Biafore in the amount of

Five Hundred Thirty Six Dollars and Ninety-One Cents ($536.91) with intent to convert said check to their own use, the defendants ROBERT E. MYLAN and JOHN A. TARKO then knowing said check to have been stolen. (Title 18, United States Code, Sections 641 and 2).

COUNT ELEVEN

On or about the 1st day of June, 1976, within the Eastern District of New York, the defendant ROBERT E. MYLAN and the defendant JOHN A. TARKO wilfully and knowingly did receive, conceal and retain stolen property of the United States, that is a United States Treasury check number 25,409,760 payable to Elton G. Sayward in the amount of Three Hundred Seven Dollars and Eleven Cents ($307.11) with intent to convert said check to their own use, the defendants ROBERT E. MYLAN and JOHN A. TARKO then knowing said check to have been stolen. (Title 18, United States Code, Sections 641 and 2).

COUNT TWELVE

On or about the 1st day of June, 1976, within the Eastern District of New York, the defendant ROBERT E. MYLAN and the defendant JOHN A. TARKO wilfully and knowingly did receive, conceal and retain stolen property of the United States, that is a United States Treasury check number 25,405,018 payable to Victor R. Sotoaleca in the amount of Two Hundred Forty Five Dollars and Sixty-Seven Cents ($245.67) with intent to convert said check to their own use, the defendants ROBERT E. MYLAN and JOHN A. TARKO then knowing said check to have been stolen. (Title 18, United States Code, Sections 641 and 2).

COUNT THIRTEEN

On or about the 1st day of June, 1976, within the Eastern District of New York, the defendant ROBERT E. MYLAN and the defendant JOHN A. TARKO wilfully and knowingly did receive, conceal and retain stolen property of the United States, that is a United States Treasury check number 25,409,210 payable to Robert A. Stitham in the amount of One Hundred Five Dollars and Twenty-One Cents ($195.21) with intent to convert said check to their own use, the defendants ROBERT E. MYLAN and JOHN A. TARKO then knowing said check to have been stolen. (Title 18, Unites States Code, Sections 641 and 2).

COUNT FOURTEEN

Commencing on a date unknown to the Grand Jury and continuing through the 1st day of June, 1976, within the Eastern District of New York and elsewhere, the defendant ROBERT E. MYLAN and the defendant JOHN A. TARKO, did knowingly and wilfully conspire to commit offenses against the United States, in violation of Title 18, United States Code, Sections 641 and 1708, by conspiring to possess, conceal and retain with intent to convert to their own use, the contents of letters stolen from the United States mail which were items of value belonging to the United States, to wit: quantities of United States Treasury checks of value in excess of Two Hundred Eighty Thousand Dollars ($280,000), the defendants knowing the same to have been stolen. (Title 18, United States Code, Section 371).

In furtherance of the said unlawful conspiracy and for the purpose of effecting the objectives thereof, the

defendants ROBERT E. MYLAN and JOHN A. TARKO committed the following:

OVERT ACTS

1. On June 1, 1976 the defendant ROBERT E. MYLAN proceeded to La Guardia Airport, Queens, New York in possession of approximately 702 U.S. Treasury checks.

2. The Grand Jury repeats and realleges each and every allegation contained in Counts One through Thirteen as if more fully set forth herein.

A TRUE BILL

Joyce La Cugna
FOREMAN

David G. Trager
DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EXHIBIT "A"

- - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

- against -

VEHICLE KNOWN AND DESCRIBED AS A 1975 LINCOLN, BEARNING NEW JERSEY LICENSE PLATE NUMBER 777 CYS

AFFIDAVIT FOR A SEARCH WARRANT

Title 18, U.S.C., Section 641

- - - - - - - - - - - - - - - - - - X

BEST COPY AVAILABLE

EASTERN DISTRICT OF NEW YORK, SS:

EUGENE L. CROUCH, being duly sworn, deposes and says that he is a Special Agent of the Federal Bureau of Investigation, duly appointed according to law and acting as such.

Your deponent has reason to believe that there is presently being possessed, concealed and retained in the vehicle known and described as a 1975 Lincoln, bearing New Jersey license plate number 777CYS, approximately Two Hundred and Eighty Thousand Dollars ($280,000.00) in stolen negotiable United States Government checks in violation of Title 18, United States Code, Section 641.

The source of your deponent's information and the grounds for his belief are:

(1) A confidential informant who has furnished reliable information to the Federal Bureau of Investigation in the past which information has led directly to the recovery of a total in excess of Seventy Thousand Dollars ($70,000.00) in stolen negotiable securities, advised that on April 29, 1976, Robert Mylan, a resident of South New Jersey, who drives a 1974 or 1975 yellowish green Lincoln bearing New Jersey license number 777CYS, had in his possession approximately Five Hundred Thousand Dollars ($500,000.00) worth of stolen United States Government checks, a portion of which he was attempting to sell to a prospective buyer in New York City.

(2) During the week of May 3-7, 1976, the confidential informant advised that Robert Mylan made a trip to New York City for

the expreer purpose of exhibiting some samples of the stolen United States Government checks described above to said prospective buyer. The informant personally observed one of the sample checks and noted that it bore serial number 2834643 in the amount of One Hundred One Dollars ($101.00) and some odd cents. According to the informant Robert Mylan is asking 20 cents on a dollar for these stolen checks.

(3) Also during the period May 3-10, 1976, Robert Mylan, according to the informant, driving the above-described Lincoln, bearing New Jersey License number 777CYS, travelled to New York City where he met the aforementioned prospective buyer and truned over to this individual in excess of Eighty Thousand Dollars ($80,000.00) in stolen negotiable United States Government checks for the sum of approximately Fifteen Thousand Dollars ($15,000.00). The informant, who was in a position to personally observe some of the above checks, advised that one of these checks bore serial number 283[illegible]722 in the amount of Two Hundred Thirteen Dollars ($213.00) and some odd cents.

(4) Records of the Division of Motor Vehicles State of New Jersey were checked by an Agent of the Federal Bureau of Investigation on April 29, 1976, which check revealed that New Jersey license 777CYS is registered to Robert E. Mylan, residing at 95 Tunes Brook Drive, Brick Town, New Jersey, on a 1975 green, 4 door Lincoln.

(5) By communication dated May 7, 1976, the Washington Field Office of the Federal Bureau of Investigation advised that inquiry at United States Secret Service, Washington D.C. (USSS) revealed United States Government checks bearing numbers 28348643 and 28348722 are valid and not in the name of Robert Mylan. USSS further advised that their inquiry at the United States Treasury Fiscal Services Division of Disbursements, Brimingham, Alabama, revealed that the above described checks were issued and placed in the mail on April 29, 1976 for delivery to the respective payees. In addition, USSS advised that these checks were mailed care of U. S. Treasury Distribution, Rochester, New York and stolen in bulk either from a central post office facility or at an airport in the Rochester,

New York area. If stolen in bulk or in mail pouch, USSS stated that the number of checks would be in sufficient quantity to be valued at one half million dollars.

(6) On June 1, 1976, the aforesaid informant advised that Robert Mylan would proceed to the Eastern Airlines Shuttle Parking Lot at LaGuardia Airport, Queens, New York with approximately Two Hundred Eighty Thousand ($280,000.00) worth of stolen checks, dated on or about May 30 or May 31, 1976, to be sold to the prospective buyer on June 1, 1976 at the aforesaid location. The informant further advised that Robert Mylan would be driving to that location in the previously described 1975 Lincoln bearing New Jersey license plate number 777CYS and that the aforementioned stolen checks would be secreted in that vehicle.

(7) Verification by Agents of the Federal Bureau of Investigation that Robert Mylan was observed on June 1, 1976 driving the above described Lincoln north on the Garden State Parkway toward New York City.

(8) Information provided by the Kansas City Office of the Federal Bureau of Investigation that a shipment of Government checks dated May 31, 1976 where mailed to Rochester, New York on May 2, 1976.

WHEREFORE, your deponent respectfully requests that a search warrant be issued authorizing your deponent and other agents of the Federal Bureau of Investigation to enter the vehicle known and described as a 1975 Lincoln bearing New Jersey license plate number 777CYS and there to search for and to seize the aforementioned quantity of stolen negotiable United States Government checks relating to a violation of Title 18, United States Code, Section 641, which are presently being possessed, concealed and retained in violation of law.

Special Agent
Federal Bureau of Investigation

Sworn to before me this
1st day of June 1976

UNITED STATES MAGISTRATE
EASTERN DISTRICT OF NEW YORK

A TRUE COPY

U.S. Magistrate, EDNY

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ OCT 18 1976 ★
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - -

UNITED STATES OF AMERICA

-against-

ROBERT E. MYLAN and
JOHN A. TARKO,

Defendants.

- - - - - - - - - - - - - - - - - -

76 CR 467

Memorandum of Decision
and Order

October 15, 1976

MISHLER, CH. J.

The defendants move for an order, pursuant to Rule 12(b)(3) and Rule 41(f) of the Federal Rules of Criminal Procedure, suppressing (1) contraband seized on June 1, 1976, from the defendant Mylan's automobile; and (2) statements allegedly made by the defendants to federal agents.

The defendants were indicted in July 1976 for conspiracy to possess and possession of stolen United States Treasury checks, in violation of 18 U.S.C. §§641 and 2. The indictment stems from the seizure, pursuant to a warrant, of $280,000 in Treasury checks from a car

driven by Robert Mylan. Mylan was arrested immediately after the seizure and later made allegedly incriminating statements during a conversation with a federal agent, which Mylan had initiated for the purpose of recovering his automobile, seized at the time of his arrest.

Tarko was arrested one month after Mylan's arrest and, both before and after his arrest, he too made allegedly incriminating statements during conversations with federal agents. Since an evidentiary hearing is necessary to resolve the motions to suppress the defendants' oral admissions, we deal here with the motion to suppress evidence seized from Mylan's car. Parenthetically, Tarko's standing to object to the seizure of the securities apparently is based on his claim that the seized securities were used to identify him and to elicit incriminating statements at the time of his arrest.

Since the search of Mylan's car and the seizure of the securities was conducted pursuant to a warrant, the issue before the court is whether the affidavits supporting the search warrant were insufficient to show probable cause. The warrant was based on the affidavit of Eugene L. Crouch, a special agent of the Federal Bureau of

Investigation. The issuing magistrate was informed by the affidavit that the source of the deponent's information was "[a] confidental informant who has furnished reliable information to the Federal Bureau of Investigation in the past which information has led directly to the recovery of a total in excess of Seventy Thousand Dollars ($70,000.00) in stolen negotiable securities." According to the informant, Robert Mylan was in possession of $500,000 worth of stolen Treasury checks and, during the week of May 3-7, Mylan traveled to New York to show the checks to a prospective buyer. The informant "personally observed" one of the sample checks, noting the serial number. Sometime later, Mylan, according to the informant, consummated the sale with his New York City buyer. The informant was again in a position to observe the checks, and again noted the serial number of one of these checks. Independent investigation by the Federal Bureau of Investigation revealed that government checks bearing the numbers noted by the informant were valid; that the checks were not owned by Mylan; and that these checks had been "stolen in bulk" from the United States mails while enroute to Rochester, New York, sometime after April 29, 1976. In addition, a New Jersey license

plate number and the description of the car driven by Mylan provided by the informant matched that of a car registered to Robert Mylan. Finally, according to the affidavit, the informant advised the government that on June 1, 1976, Mylan would drive to LaGuardia Airport to deliver stolen checks to a buyer. According to the informer, the checks, in the amount of $200,000, were "dated on or about May 30 or May 31, 1976." On June 1, 1976, Mylan was observed driving a car, whose description had been provided by the informant, north on the Garden State Parkway toward New York. Moreover, the Kansas City office of the Federal Bureau of Investigation informed the agents on the Mylan case that a shipment of government checks dated May 31, 1976, had been mailed on May 30th to Rochester, New York, the same destination of the checks stolen after April 29th. That same day, June 1, 1976, the search warrant was issued by the magistrate; the warrant was executed and $280,000 in government checks was seized from Mylan's car.

The Supreme Court's decision in Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509 (1964), and Spinelli v. United States, 393 U.S. 410, 89 S.Ct. 584 (1969), formulated the basic principles governing the sufficiency of a

warrant application:

> Although an affidavit may be based on hearsay information and need not reflect the direct personal observations of the affiant . . . the magistrate must be informed of some of the underlying circumstances from which the informant concluded that the narcotics were where he claimed they were, and some of the underlying circumstances from which the officer concluded that the informant, whose identity need not be disclosed, . . . was "credible" or his information "reliable."

Aguilar v. Texas, supra at 114, 84 S.Ct. at 1514 (footnote and citations omitted). See Jones v. United States, 362 U.S. 257, 80 S.Ct. 725 (1960). The supporting affidavits, however, must be tested and interpreted in a common sense manner without requiring hypertechnical specificity in order to find the existence of probable cause. See United States v. Ventresca, 380 U.S. 102, 85 S. Ct. 741 (1965); United States v. Soyka, 394 F.2d 443, 453 (2d Cir. 1968) (Friendly, J.) (en banc), cert. denied, 393 U.S. 1095, 89 S.Ct. 883 (1969); United States ex rel. Rogers v. Warden of Attica State Prison, 381 F.2d 209, 218 (2d Cir. 1967), remanded en banc, 381 F.2d 221 (2d Cir. 1967). With this consideration in mind, we turn to an examination of whether the

affidavit satisfies the Aguilar-Spinelli requirements.

Here, the affidavit provided sufficient information for the issuing magistrate to conclude that the informer was credible. The first paragraph stated that information provided by the informer on a past occasion had been accurate, leading directly to the recovery of stolen securities. See Rugendorf v. United States, 376 U.S. 528, 84 S.Ct. 825 (1964). Moreover, the Supreme Court has recognized that the credibility of the informant can be demonstrated by matching information gathered by the police against that provided by the informer. Spinelli v. United States, supra at 417-18, 89 S.Ct. at 589-90, discussing Draper v. United States, 358 U.S. 307, 79 S.Ct. 329 (1959); United States v. Canestri, 518 F.2d 269, 272 (2d Cir. 1975). The information provided by the informant concerning the license plate and description of Mylan's car, the serial numbers and dates of the stolen checks and the direction in which Mylan was driving on June 1st, was corroborated in its entirety by independent police inquiry and surveillance.

As to the other prong of the Aguilar test, that the information provided by the informant be reliable, the magistrate here was properly informed of some of the

underlying circumstances from which the informant concluded that Mylan was engaged in illegal sales of stolen securities. In Spinelli, "the Supreme Court gave recognition to personal observation as a reliable basis for an informant's report." United States v. Viggiano, 433 F.2d 716, 719 (2d Cir. 1970), cert. denied, 401 U.S. 938, 91 S.Ct. 934 (1971). The informant here stated that he personally observed stolen checks that, on two occasions, were exhibited or sold by Mylan. See United States v. Canestri, supra at 272. Moreover, investigation revealed that checks bearing the serial numbers noted by the informant indeed had been stolen from the United States mails. A person of reasonable caution could infer that the Federal Bureau of Investigation's informant was either assisting Mylan in the sale of the stolen checks or was sufficiently friendly with Mylan to be in a position to observe the preparations for the sales or the actual sales themselves. Indeed, the nature of the other information provided by the informer—the description of Mylan's car, the direction he was driving on June 1st, the amount of money secreted in the car—supports just such an inference. The supporting affidavits plainly show that the informant was relying "on something more

substantial than a casual rumor circulating in the underworld or an accusation based merely on an individual's general reputation." Spinelli v. United States, supra at 416, 89 S.Ct. at 589.

Accordingly, the defendants' motion to suppress the seized government checks is denied. The evidentiary hearing on the oral admissions will be held on the first day of the trial, scheduled to begin on November 22, 1976.

It is

SO ORDERED.

The Clerk of the Court is directed to enter judgment dismissing the defendants' motion to suppress.

U. S. D. J.